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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,001	10/29/2003	Nobuhiro Nishiyama	204552030600	5307
25227 7590 11/14/2008 MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 400 MCLEAN, VA 22102				
EXAMINER				
NGUYEN, TUAN N				
ART UNIT		PAPER NUMBER		
2828				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: NOBUHIRO NISHIYAMA and KENICHI KURITA

Application No. 10/695,001
Technology Center 2800

Mailed: 13 November 2008

Before LAWRENCE J. BANKS *Paralegal Specialist*.

BANKS, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on September 30, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed December 20, 2007, is deficient because the "Evidence Relied Upon" section fails to include the reference applicant's prior art figure Fig. 7a, cited on page 6 in the Examiner's Answer's grounds of rejection of claims 13 and 14 rejected under 35 USC § 103(a).

Appropriate correction is required.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated August 22, 2008. There is no indication on the record that the Examiner has considered the above Information Disclosure Statement. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8);
- 2) consider the Information Disclosure Statement filed August 22, 2008; and
- 3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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